

**INDEPENDENT COMMISSION AGAINST CORRUPTION**

**SPEECH BY**

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Setting up the Independent Commission Against Corruption was the political response to community concern about serious corruption that had been exposed in public administration. Farquhar and Jackson are but two of the names of the early 1980's that are linked to a serious downturn in public confidence in our system of government and administration. The fact that a senior judicial officer had gone to gaol for perverting the system of justice of which he was an important part, sent shock waves through the community. If you could not trust the judges, whom could you trust? The fact that a Minister of the Crown was sentenced to a long term of imprisonment because he had corrupted the very system he was administering, left the community angry, disillusioned and untrusting of the political process.

As was said in the Parliament in May 1988 by the Premier of the day:

"Nothing is more destructive of democracy than a situation where people lack confidence in those administrators and institutions that stand in position of public trust."

Change was needed. Change was demanded by the community. The instrument of change chosen by the Parliament of New South Wales was the Independent Commission Against Corruption.

Its objective is fixed; to eliminate corruption in the public sector in New South Wales. To achieve this objective, the Parliament mandated a three pronged attack by the ICAC on corruption; investigation, corruption prevention work and education. The mix of these three elements has varied over the life of the ICAC, and for good reason.

When it was first established, the ICAC was looked at with suspicion by a number of Members of Parliament, particularly those who were in Opposition. They feared that it may be used as an instrument of political pay-back, adopting an agenda made for it by the Government of the day. Furthermore, the powers given to the fledgling organisation

were extensive and cut across a number of well entrenched concepts of civil liberties in our country.

It was necessary therefore for the ICAC to establish itself, win the confidence of the community, demonstrate its independence and hopefully convince politicians that it was not the hand maiden of government, keen to do its bidding. The strategy for the early days of the ICAC necessarily focused on these goals.

The best way of achieving such short term goals was by media exposure and that in turn required emphasis on the use of the Commission's investigative functions and showcasing the outcomes in public hearings, which tended to be dramatised by the media.

One of the problems associated with such a strategy is that the public sector, be it Minister, Member of Parliament, departmental head or departmental staff, shies away from a body that is seen as essentially investigative and consequently primarily punitive. Investigations look to past wrong doings, of the individual and of government departments. They are necessarily retrospective and although they expose corrupt conduct that has occurred, without more they do not bring about change. Yet the ICAC was always intended to be an agent for change.

Another problem is that the punitive approach produces antagonism, suspicion and lack of co-operation. That is a natural human response and it was the response to the ICAC in its earlier days. Furthermore, when an organisation has a high profile, any mistakes that it makes are more newsworthy and more damaging. That was amply demonstrated when the Court of Appeal reversed the findings of the Commission in the Greiner/Metherell matter. The response to that reversal was anger at and resentment against the ICAC on the part of politicians; concern on the part of the community. The future of the ICAC was under a cloud. It took some time for the Commission to recover from that.

It was always contemplated by the Parliament that the ICAC would not be just an investigative body. This is made clear by the functions conferred on the Commission by in s13 of the ICAC Act. As I have said, investigating is but one of those functions. Furthermore, in the second reading speech, it was stressed that:

"The ICAC is not purely an investigatory body. The Commission also has a clear charter to play a constructive role in developing sound management practices which help to ensure that decisions are made which are honest, impartial and not in breach of public trust."

Its functions include making public officials more aware of what it means to hold an office of public trust, more aware of the detrimental effects of corrupt practices and more deeply cognisant of the need for the public interest to predominate in the exercise of governmental powers and functions.

It was against this background that I took up the office of Commissioner of the Independent Commission Against Corruption in November 1994.

By that time it was judged appropriate for the Commission to change too. The community's perception about its success in exposing corruption was good (78%) and there was a strong belief in the community that the ICAC was a good thing for New South Wales (91%). It is even better now: 95% (good thing); 84% (successful in exposing). The figures from a survey of journalists conducted for the first time in 1999 are 100% (good thing); 97% (successful in exposing). However, the response by the public sector was not nearly as positive. Generally it looked upon the ICAC with suspicion. The usual response to a call from the ICAC was guarded at best; resistance, very common. A good example of this was a test that was carried out in late 1994 at the Department of Agriculture in Orange.

How to change this? How best to win the confidence of those who headed government departments and agencies so that they would listen to the ICAC and act positively on advice and recommendations made by it.

Human beings tend to react against those who constantly criticise them. Most of us have a much more highly developed sense of injustice than of justice. It is more common to hear the cry: "It's not fair", than its opposite. Those who only criticise tend to be seen as the enemy and the human responses to such a situation include resentment, rejection, lack of trust, fear and anxiety. Such an atmosphere is counter productive when the object of these negative responses is the very organisation that is seeking to bring about change. It is no good preaching to an empty church nor to those who block their ears. In such circumstances the lessons that the agent for change seeks to impart will, like the fragrance of the rose that blooms unseen in the desert, be wasted. We are more likely to respond to those whom we trust than we are to those whom we regard as enemies. This is true even if the trust is limited.

The response by the Commission from early 1995 was to give added emphasis to the corruption prevention and education functions provided for in the ICAC Act. The philosophy was to enhance the use of these functions, introduce them at an early stage of investigations where appropriate, and exercise them in parallel with the investigative function. To assist the selection of matters for attention became an important consideration and was achieved through appropriate research and strategic analysis of data. Initially this was criticised by some, both politicians and armchair analysts. But that criticism has now been stilled. The results of the change have established their value.

The advantage of combining corruption prevention work with investigative work in the same agency is twofold. First, it enables remedial action to be taken by the relevant department well before the final report of the Commission into the corrupt conduct is published. Secondly, it demonstrates to the department that the ICAC is not concerned just with investigating corrupt conduct, but is also concerned to enlist the co-operation

of the department in devising and implementing systems to prevent a recurrence of the problem that had been exposed as a consequence of inadequacies in departmental systems.

We have found that the response of government departments the subject of investigation is much less defensive, more open, more co-operative than it had been in the past. They recognise that their co-operation enables the department to emerge from the investigation in better condition than it had been before the investigation. That has very positive effects for the public image of the department and for the morale of its staff.

Corruption prevention work, which in part involves advice and assistance in relation to the solving of ethical problems, enabled the Commission to work with government departments outside an atmosphere of investigation. This has proved to be particularly valuable. Whereas in its early days the Commission was disinclined to tender advice, the change in emphasis has meant that more and more Ministers, CEOs, senior management and other staff come to the Commission at a very early stage of projects which involve concerns about ethical matters or possible corruption, either in fact or in perception. This has enabled the Commission to apply the maxim: prevention is better than cure. Over time, this has produced a high degree of trust in the work of the Commission and as a consequence, has helped to ensure that Ministers and government departments listen to and apply the principles of probity enunciated by the Commission.

An excellent example of the combination of corruption prevention and education work in parallel with an investigation is Operation Aroo. It was concerned with the old State Rail Authority of New South Wales, an organisation in which corruption was rife and costing the taxpayers of New South Wales many millions of dollars each year. With the support of the Minister for Transport and the Chief Executive Officers of each of the four rail organisations into which the SRA was split, not only was the investigation successful, but the report was able to chronicle both the strategies for the elimination of corruption adopted by each of the rail organisations, and time tables for the implementation of those strategies.

To their credit each of the four rail organisations in New South Wales - the new SRA, Freightcorp, Rail Access Corporation and Rail Services Authority, has maintained its emphasis on integrity. In their Annual Reports most have reported on the on-going steps being taken. All have co-operated with the ICAC in its monitoring role in relation to corruption prevention and a number of them have enlisted the services of ICAC staff, even the Commissioner, in their educational programs.

There can be no doubt that the public sector climate in relation to integrity has changed markedly since the ICAC opened its doors on 13 March 1989. At that time few public sector organisations thought or spoke about integrity as one of the values of the organisation. Few had codes of conduct; even fewer had any educational or training programs in relation to ethical behaviour and integrity in public office. The situation is very different today.

All public sector organisations, including local government councils, have codes of conduct. Members of Parliament have a code of conduct. It was introduced as a result of the Greiner/Metherell inquiry. Whilst it is not as strong as the ICAC would like, nor as strong as the draft codes that were formulated by both the Legislative Council and the Legislative Assembly, the present code is a start. It can be built upon, strengthened and refined over time. Furthermore, most public sector organisations now have some form of in-service training in which probity and integrity are factors.

Bringing about change takes time. Motivating people is a gradual process. Fear of detection, punishment, adverse publicity and loss of employment are motivating factors but they are not the best motivating factors. The Commission, whilst maintaining a strong investigative unit, (in fact larger than it was in 1994), has been more sophisticated in its approach to motivating public sector agencies and employees in relation to probity and integrity.

Most people like to be recognised and appreciated. Job satisfaction is important. Most like to be able to say that they work for an organisation that does a good job, does it honestly and effectively. Most like to feel a sense of pride about their work and the organisation they work for. Improving the ethical tone of an organisation helps to foster all these human reactions.

Linking ethical behaviour to reward is another effective motivator.

In its report in the Semple inquiry (November 1996), the ICAC advocated a number of changes and recommended steps to improve the understanding of and adherence to the principles of probity in public office. Our advocacy struck a receptive chord with the Government. Three key initiatives were undertaken; one, a General Code of Practice for New South Wales Government Procurement was introduced with special emphasis being given to the principles of ethical behaviour on the part of contractors, suppliers, subcontractors, consultants and employers who wished to provide goods or services to the Government of New South Wales. The code now provides that ethical principles must be adhered to by all parties, at all times and at all levels. It also requires that the tendering process be conducted with honesty and fairness and outlaws improper inducements. An important requirement of the code is that tenderers must be prepared to attest to their probity and show that they have not engaged in any form of collusive practice.

The second initiative is the requirement that integrity, responsibility for preventing corruption and promoting ethical behaviour, has been made a key accountability for Senior Executive Service (SES) appointments. The third initiative introduced in January 1999, is the requirement by the government that all performance agreements with Chief Executive Officers (CEOs) include a responsibility for:

"... effective, efficient, equitable and ethical conduct and economical management of the functions of the organisation."

Furthermore, key accountabilities now include leadership, components of which are:

- ◆ Personally role modelling the management style/behaviours wanted within the agency
- ◆ Establishing and maintaining a culture of integrity and professionalism.

These measures convey a message that is loud and clear, namely that integrity in the public sector is a priority in New South Wales. This is the very message that the Parliament contemplated when it considered the ICAC Act in 1988 and is the very message which the ICAC has been seeking to impart especially in recent years.

But have things really changed? In my view they have. Not only are there codes of conduct in place throughout the public sector; not only are there training programs provided by most public sector agencies; not only is there a code of conduct for Parliamentarians, but in addition, there is a growing recognition on the part of government that good ethics are good government and that good ethics are good business as well. Furthermore, there is a will to match the recognition with action. This is particularly important in an era in which attracting investment capital is increasingly important and competition for such capital is keen. New South Wales has led the way and has used the ICAC as a demonstration that the Government of New South Wales is serious about honesty, integrity and probity in its dealings with the private sector. This has helped to attract a lot of investment capital and many overseas corporations to New South Wales.

Whereas there was a real concern about the permanence, the future of the ICAC in the period 1993 to 1995, that concern has now largely gone. There has been repeated public recognition by the Premier, the Treasurer and various Ministers that the ICAC is an important mechanism for the oversight of public sector probity. It is significant that this recognition has been repeated at a time when some anonymous Members of Parliament have been reported as questioning the future existence and role of the ICAC.

The recognition that the ICAO has a valuable role to play and that it is an effective oversight body is not merely local, it is international as well. The corruption prevention, education products of the ICAC are widely sought in other States and parts of the Commonwealth and by many other countries. The approach of the ICAC in New South Wales is regarded in a number of important international fora as the paradigm. A number of countries have sent officers to the ICAC for training. Even more countries have sought advice from the ICAC and assistance from a number of ICAC officers in relation to the exposure and prevention of corruption in those countries. I was invited by the Commonwealth Secretariat to be one of an Expert Group of ten to formulate an international strategy and suggestions for domestic programs to eliminate corruption in government and improve the probity of administration in the 54 Commonwealth countries. Our Director of Investigations has been co-opted to an Interpol Committee in recognition of the strength and effectiveness of the Commission's ability to expose and prevent corruption.

Whilst much has been achieved, much remains to be done. The successes to date should not cause the Government, the community or the ICAC to be complacent. On-going vigilance and effectiveness are called for. They require a strong and effective oversight body, as the ICAC presently is. However, it is important that it remain strong and effective. It is important that it be able to conduct penetrating investigations. It is important that it be able to expand its highly regarded corruption prevention and education work. It is important that its research remains world class. All this means that it must be properly resourced. It should be able to afford technology that can be used to outsmart the elements in our community that would seek to subvert the public sector. It should be able to recruit the best available investigators, corruption prevention and education officers, and researchers. It will not be able to continue to do this if it is the subject of continual budget cuts.

I recognise that budget allocations involve competition between different agencies, different community groups, different political agendas. However, governments should

never lose sight of the fact that the hard won gains of the past can be lost if adequate resources are not provided for the ICAC.

The Government's score card in relation to probity has been good during the time that I have been Commissioner. It could always be better and I hope that when my successor takes office in November 1999, that successor will be able to look forward over the next five years to an even better score card.

The end of my term as ICAC Commissioner is rapidly approaching. My return to the Supreme Court is provided for in the legislation. I leave the ICAC in good condition. Its reputation is high, its effectiveness acknowledged by the community, the media and thinking politicians. It is recognised as a world leader in the anti-corruption field, both locally and internationally. The quality, dedication and morale of the staff is excellent, the challenges of the future largely identified.

I wish my successor every success in the important office of Commissioner and hope that there will be even greater achievement in the coming years - building on the solid base that such successor inherits.

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